

# Memorandum

**To:**     **Airspace Advisory Committee**

**Date:**   **March 26, 2003**

**From:**   **Kathie Jacobs**

**File No:**

**Ref:**     **Applicability of Political Reform Act (FPPC) to the AAC**

Over the last several months I've had several conversations with the Commission's legal council (California Attorney General's Office) to discuss whether or not the AAC was a public body and whether or not the Committee members would need to submit conflict of interest statements under the Political Reform Act. In response we've received an informal opinion from our attorney regarding the AAC and its requirements under the Bagley-Keene Open Meeting Act and the Political Reform Act.

Based on the informal opinion, it has been determined that the Bagley-Keene Act applies to the AAC because it is a "multimember advisory body of a state body" which was created by formal action of the state body or of any member of the state body and consists of three or more persons. (Government Code Section 11121.8).

The phrase "state body" is defined as "every state board, or commission, or similar multimember body of the state that is required by law to conduct official meetings and every commission created by executive order."

Whether an advisory body has to comply with the Political Reform Act does not depend on whom or what created it. What matters is whether it is a "decision-making body." The FPPC places emphasis on whether the recommendations of a body are regularly accepted in determining whether the body is a decision-making one.

The conflict of interest provisions of the Act apply only to public officials, including designated employees. The term designated employee is defined in Section 82019 to specifically exclude members of boards and commissions which serve a solely advisory function. Regulation 18700 (a)(1) provides guidelines in determining whether a board or commission is "solely advisory" or has decision-making authority. Based on the following it has been determined that the AAC has decision-making authority and therefore must comply with the Act.

Regulation 18700 (a)(1) states:

    "Public official at any level of state or local government, means a member, officer, employee or consultant of a state or local government agency..."

    "Member shall include but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

        (A) It may make a final governmental decision;

        (B) It may compel a governmental decision; or it may prevent a governmental decision by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.”

A board or commission which does not possess decision-making authority pursuant to the provisions of Regulation 18700 (a)(1) is solely advisory in nature. However, if an advisory board makes “substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency, then it is considered to be a decision making body. We believe that the Airspace Advisory Committee falls within Item (C) above and therefore, consequently, it must adopt a conflict of interest code and its members must disclose reportable financial interests. It should be noted that a member of an advisory committee or board need not be a voting member in order to be subject to the provisions of the Political Reform Act. If the non-voting members of the body play a role in influencing decisions, then they, as well as voting member, are subject to the Act.

At this time Commission staff is working on including a conflict of interest code for the Airspace Advisory Committee in with its code. The inclusion of the AAC code would need to go to the FPPC for approval. I expect this process to take several months. Attached is Form 700 – Statement of Economic Interests for your review. At this time it is only for review, we are not asking you to complete the form until we’ve completed the process with the FPPC.

Also attached to this item is the annual invitation from the Commission for your continued service on the Committee. Our hope is that you’re able and willing to continue with the Airspace Advisory Committee during the next year. Please return your response to me no later than Thursday, May 8, 2003.